

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JEROME TALLEY,

Plaintiff,

v.

LONNY R SUKO,

Defendant.

CASE NO. 3:15-CV-05776-MJP-DWC

REPORT AND RECOMMENDATION

Noting Date: November 20, 2013

The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge David W. Christel. The Court has reviewed Plaintiff's Complaint and concludes Plaintiff's *in forma pauperis* (IFP) application should be denied based on the three-strikes rule of 28 U.S.C. 1915(g), and Plaintiff should be directed to pay the \$400.00 filing fee in order to proceed with his Complaint.

DISCUSSION

Plaintiff Jerome Talley, a pretrial detainee being held at Kitsap County Jail, filed an application to proceed IFP in this civil rights action on October 26, 2015. Dkt. 1. Plaintiff has multiple §1983 cases currently pending before this Court. On September 24, 2015, Senior

District Judge Lonny R. Suko¹ entered an order denying Plaintiff's application to proceed IFP in *Talley v. Sias, et al.*, 3:15-cv-5501-LRS (W.D. Wash) because Plaintiff incurred at least three "strikes" prior to initiating the lawsuit. Judge Suko also denied the applications to proceed IFP in *Talley v. Congalton, et al.*, 3:15-cv-5534-LRS (W.D. Wash) and *Talley v. Creatura*, 3:15-cv-5585-LRS (W.D. Wash) because Plaintiff has incurred at least three "strikes."

Concurring with Judge Suoko, this Court finds Plaintiff incurred the following "strikes" prior to filing this lawsuit: *Talley v. Holevinski* (E.D. Wash Case No. 02:99-cv-5036); *Talley v. Bailey, et al.* (W.D. Wash Case No. 2:08-cv-00677-TSZ); *Talley v. Bailey, et al. (II)* (W.D. Wash Case No. 2:08-cv-00752-RSM); and *Talley v. Rogers* (W.D. Wash Case No. 2:08-cv-01761-TSZ). *See Talley v. Sias, et al.*, 3:15-cv-5501-LRS (W.D. Wash)².

As Plaintiff has incurred at least three strikes, he may not proceed IFP unless he can show he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). The imminent danger exception requires a prisoner allege a danger which is "ready to take place" or "hanging threateningly over one's head." *Andrews v. Cervantes*, 493 F.3d 1047, 1056 (9th Cir. 2007). In this case, Plaintiff challenges Judge Suko's authority to hear and decide Plaintiff's cases. *See* Dkt. 1-1. Plaintiff does not allege danger of any physical injury, much less an imminent serious physical danger which is "ready to take place" or "hanging threateningly over [his] head." *Cervantes*, 493 F.3d at 1056. Therefore, the imminent danger exception does not apply in this case, and Plaintiff is subject to the three-strikes rule.

¹ Judge Suko, an Eastern District of Washington District Judge, was assigned to several of Plaintiff's cases in which Western District of Washington judges were named as defendants.

² This court may take notice of judicial proceedings in another court. *See U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

CONCLUSION

The Court recommends Plaintiff's Motion to Proceed IFP be denied as Plaintiff has incurred at least three strikes under 42 U.S.C. § 1915(g). The Court further recommends Plaintiff be ordered to pay the \$400.00 filing fee within thirty days of the District Court's order and, if the fee is not paid, dismiss this case without prejudice.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on November 20, 2015, as noted in the caption.

DATED this 30th day of October, 2015.



David W. Christel
United States Magistrate Judge